IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 299

GEORGE A. LANDELL, EXECUTOR, ET AL., *Petitioners,*

v.

NORTHERN PACIFIC RAILWAY COMPANY, *Respondent.*

PETITION FOR REHEARING

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

On October 10, 1955, petition for writ of certiorari was denied in the above-entitled case, decided by the Court of Appeals for the District of Columbia Circuit, Judges Prettyman, Bazelon and Bastian sitting. The Court of Appeals by per curiam opinion affirmed the summary judgment of District Court Judge Tamm dismissing the complaint for laches. This suit involves a railroad main line franchise and right of way through the federal public domain with privilege of tax exemption thereon, all vested by Con-

gress in the existing federal corporation, Northern Pacific Railroad Company, in which petitioners hold about 3% of the stock and respondent 97%. Respondent claims full ownership of the franchise and tax exemption privilege by virtue of consent decree of a Wisconsin federal court made in proceedings wherein petitioners were not parties and no provision was made for them.

The fundamental constitutional question in this case (See "Franchises", Charles W. Needham, 15 Col. L. R. 97), ignored by the courts below, is that respondent is taking and using the Railroad's federal operating franchise, a property of great value, without compensation to petitioners who have ownership rights in this franchise. The District Court's opinion erroneously treats the complaint as an attempt to upset ancient, free grants of land. Its failure to recognize and decide the franchise question constitutes abdication of the judicial function which should not be condoned by this Court.

Congress has not authorized transfer of the franchise to respondent. The existing federal corporation has no power to make a voluntary assignment of the franchise to respondent. The consent foreclosure decree purporting to make this assignment has been held by this Court as having no higher status than a private agreement. *Northern Pacific Railway Co.* v. *Boyd*, 228 U. S. 482 (1913).

Inherent in this case but not decided are four questions:

1. In the absence of federal legislation can the State of Wisconsin or a court authorize respondent, as alleged successor to the federal corporation, to operate

the main line of railroad through the federal public domain in seven States?

2. In the absence of federal legislation can the State of Wisconsin or a court authorize respondent's taking and using of the privilege of right of way tax exemption granted by statute to Northern Pacific Railroad Company, the federal corporation?

3. Can respondent take, and keep to itself the current and future benefits of the franchise and tax exemption privilege in the absence of a repeal of the statute which vests same perpetually in the original federal corporation stockholders and their successors as members of a continuing body politic and corporate?

4. Should this Court permit respondent to continue unchecked its systematic misrepresentation that notwithstanding the absence of enabling federal legislation, it is entitled by virtue of consent decree and its 97% stock ownership to the full legal ownership of the aforesaid federal railroad franchise and tax exemption privilege, when the consent decree itself expressly refused to adjudicate this question?

Another question inherent in this case and decided upon the basis of a most treacherous record is: In view of the above-stated undecided matters, should the courts permit respondent to use petitioners' alleged laches to prevent judicial inquiry and determination concerning (a) respondent's present and continuing operation of the federal corporation's main line railroad and continuing use of its franchise and tax exemption privilege, and (b) respondent's continuing, systematic misuse of the judicial process to hold and use the assets vested in the federal corporation by Congress?

We therefore respectfully request that the Court's action in declining to grant a writ of certiorari be

reconsidered. We direct the Court's attention to the following:

I.

The circumstances herein are unusual. The District Court and Court of Appeals have refused to adjudicate any of the first four basic questions, all of which could have been determined as a matter of law from the bench. The courts below have arbitrarily and unjustly eliminated them from consideration or judgment. The lower court's opinion makes no mention of them. It discusses a cause of action not contained in the complaint. A rudimentary sense of fair play and good judicial administration require that this Court should not countenance the lower court's refusal to decide the basic questions in this case and its repudiation of the federal statute.* We have shown in our briefs below and in our petition for certiorari that the doctrine of laches cannot justify failure to dispose of these questions.

Government under law means at the minimum that judges must not abdicate the judicial function and balk at adjudging the rights of citizens under the plain terms of a statute. Repeal of statutes is a legislative function and the doctrine of laches affords no justification for the courts to infringe upon this legislative prerogative. Congress has refused to dissolve the federal corporation when requested to do so by petitioners. We respectfully urge that the summary judgment herein is inconsistent with the doctrine of separation of powers.

II.

The per curiam affirmance by the Court of Appeals of Judge Tamm's decision sanctions such a departure

* The word "statute" herein means the Act of July 2, 1864 (13 Stat. 365).

from the usual and accepted course of judicial proceedings as to call for the exercise of this Court's power of supervision. The proceedings were for summary judgment. The courts below have ignored and refused to accept well pleaded allegations in the complaint which were not controverted in the answer or in the record. The District Court's opinion contains a series of erroneous statements of material facts.

An appellate court, from a reading of the District Court's opinion, would fail to comprehend that it omits reference to fundamental elements of the cause of action pleaded in the complaint and that it contains incorrect statements of fact which were materially detrimental to the case of petitioners. See *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 489 (1951).

A columnar analysis makes clear the force of the foregoing statement:

Erroneous Statements in Judge Tamm's Opinion, 122 F. Supp. 253	**Corrections, Plus Comment**
(1) "Plaintiffs' allegations are substantially that the defendant became the legal successor to the Railroad by a fraud upon the Wisconsin court, that defendant has maintained this position by the misuse of judicial process, that the Wisconsin court exceeded its authority in approving conditions in the consent decrees which were in violation of the statute creating the Federal corporation, and that the proceedings were also void in that the United States was not made a party thereto." (122 F. Supp. at 254)	(1) This statement omits mention of the franchise and tax exemption issues and the fact that Congress has refused to authorize respondent as successor to the federal corporation. An appellate court relying upon this statement would be misled from and would not appreciate the significance of the factual allegations in the complaint and the legal consequences flowing therefrom. This statement demonstrates the failure of the court to accept the well pleaded allegations in the complaint. Following are complaint allega-

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	tions which Judge Tamm's opinion eliminated from the case:
	(a) "LIV. That the Congress of the United States has refused to authorize or accept the defendant, Northern Pacific Railway Company, as the legal successor to the Northern Pacific Railroad Company and has refused to sanction the transfer of such Railroad Company's franchise and property to the defendant and no such authorization, acceptance or sanction has ever been made. In 1896, prior to said judicial sales, defendant applied to Congress for legislation enabling it to purchase all the estate, rights, franchise and powers of the Northern Pacific Railroad Company and the right to be deemed the instrumentality for accomplishing the national public purposes provided in said Act of July 2, 1864, and said Joint Resolution of 1870, and the right to create additional mortgages. (House Resolution 190, 54th Congress, 1st Session, 1895; 1896. House Reports, Vol. 9, Report No. 2181. Senate Joint Resolution 124, 54th Cong., 1st Session, 1895; 1896. Senate Reports, Vol. 4, Report No. 776.) These Resolutions were not adopted." (R. 35)

Erroneous Statements in Judge Tamm's Opinion, 122 F. Supp. 253	Corrections, Plus Comment
	(b) "LII. That the franchises and right-of-way granted to the Northern Pacific Railroad Company under the Act of July 2, 1864, are inalienable without legislative authorization by the Congress of the United States and the purported sales of same to defendant without such legislative authorization and under the guise of said consent decrees and order of 1896 are void and of no effect in divesting said franchises and right-of-way and transferring same to defendant. Congress refused, as shown hereinafter, to grant such authorization. Defendant's illegal possession and control of said franchises and right-of-way under said void decrees and orders have wrongfully deprived and are so depriving the plaintiffs and others similarly situated of property to which they are entitled under the Constitution of the United States and under the said Act of July 2, 1864. Defendant, since July 13, 1896, to date, has continuously used its power as holder of more than 90% of the stock of the Northern Pacific Railroad Company to dominate and control said Company and to utilize its

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	existence only to bolster defendant's illegal possession and enjoyment of the franchises and right-of-way rightfully belonging to said Northern Pacific Railroad Company." (R. 33)
	(c) "The Northern Pacific Railroad Company by consent decree or otherwise was incompetent to transfer its railroad, franchises, right-of-way and other property and rights to property to defendant, and defendant was and is incompetent to take and hold same." (R. 44)
	(d) Prayer 2, nowhere mentioned by Judge Tamm, reads as follows: "That it be adjudged and decreed that the defendant, Northern Pacific Railway Company, has no right, title or interest in or to the franchises, railroad and right-of-way granted to the Northern Pacific Railroad Company under the Act of July 2, 1864 (13 Stat. 365) and the Joint Resolution of May 31, 1870 (16 Stat. 378) except as holder of the majority of the capital stock and the bonds of said federal corporation, and that title to same is in the Northern Pacific Railroad Company." (R. 75)

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	The franchise question was shown at the argument in the District Court to be the most basic issue in the case. The Transcript of the Hearing reads, at pp. 209-210:
	"The well pleaded allegations and affidavits herein establish that the defendant, for more than fifty years, has utilized the special railroad franchise granted exclusively to the federal corporation, has used that power to cross navigable streams, which it could not have done without federal authorization and has used that power to operate a railroad system through the public domain, through Indian reservations, which it could not do lawfully without direct power from Congress, and that in order to show its chain of title, back to Congress on its right to these things, it has procured consent decrees, managed to have Attorneys General accept such decrees as final and conclusive, and having the same validity as though entered in a contested proceeding and on that basis, has managed until now to weather every challenge that has been made as to the legality of successorship and ownership.

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	"In this case, for the first time, and I challenge my learned brother to cite authority to the contrary, in this case, for the first time the full merits of the matter have been brought into question, and in this case we have an opportunity of going ahead and settling the questions that were reserved by the Supreme Court in 1940."
(2) "*Subsequent to dismissal of the suit*, it was learned that Hoover instead of being a bona fide non-assenting shareholder, had actually participated in the reorganization, voting some of his stock in favor of the reorganization." (Emphasis supplied. 122 F. Supp. at 255).	(2) This statement is incorrect. It ignores the facts before the court. *Long before* the 1939 dismissal of the Hoover suit it had been learned that Hoover had no status to sue. Prior to the 1939 dismissal counsel for both parties had in their possession or control documents which conclusively established that Hoover had no standing to sue. These documents show that the Hoover case originally abated in 1904 (when John G. Johnson, Esq. withdrew as Hoover's counsel)* because Hoover

* Judge Tamm at several places describes John G. Johnson, Esq., as counsel for plaintiff committee. Mr. Johnson withdrew as counsel for Hoover and for any dissenting shareholder in 1904 because in that year he became counsel for defendants named in the Hoover suit. This fact appears in *Harriman* v. *Northern Securities Co.*, 196 U.S. 641 (1904). The plaintiff committee was not established until October 1, 1906 (R. 5).

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	had agreed to the reorganization by depositing 500 shares of stock thereunder.
	Judge Tamm's attention was called to these facts both in written briefs and oral argument. The statement in his opinion that not until "*subsequent to dismissal of the suit*" in 1939 was it learned that Hoover had no right to sue as a dissenter is erroneous.
	Before the motion for summary judgment herein, respondent's counsel was permitted to inspect and copy documents in petitioner's files, including papers from the files of Boylan, counsel for Hoover in the 1939 motion before Judge Hulbert.
	One of these documents was a letter dated November 24, 1914, from Francis Lynde Stetson, Esq., one of the defendants in the Hoover suit and also respondent's counsel therein, to McCullen, who had been counsel for Hoover. This letter stated that Hoover "had consented to and participated in the reorganization of 1896." (R. 251).
	With such letter in his files Boylan nevertheless in 1939 moved to restore the Hoover

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	case and filed his affidavit excusing 35 years' failure to prosecute on the ground of missing papers. He did not allege they had been found in 1939. Nor did he disclose to the court that it was then known to the parties or that the knowledge was readily available to them that Hoover never had status to sue as a dissenter. Another document in Boylan's and respondent's files in 1939 showing that the motion to restore the Hoover case to the calendar was spurious, was Exhibit E to Item No. 46 submitted by respondent's counsel and vice president at the Hearings in 1926 before the Joint Congressional Committee for the Investigation of the Northern Pacific Railroad Land Grants, pursuant to Public Resolution No. 24, 68th Cong., approved June 5, 1924 —the JCC Hearings, p. 3393. (R. 256). Exhibit E lists Hoover as a party to the 1896 reorganization agreement. This Exhibit and the 1914 letter, if made known to Judge Hulbert in 1939, would have made it impossible for him to render his inexcusable laches decision now used

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	against the petitioners. It was utterly improper for respondent to allege that Hoover was a "dissenting stockholder" (R. 115) and to plead the 1939 Hoover decision as *res judicata* (R. 119). The District Court's factual error and reliance upon such allegation and pleading calls for intervention by this Court.
(3) "In 1897, during the term of President Cleveland, counsel for the committee appealed to the Secretary of the Interior, and the matter was referred to the Attorney General who held the claims were unfounded. 21 Opinions of the Attorney General 486. In 1904, during the administration of President Theodore Roosevelt, another appeal was made to the Secretary of the Interior. It was again referred to the Attorney General and again was rejected by him. 25 Opinions of the Attorney General 401. Thus, twice, executive officers with the responsibility of guarding the public interest put plaintiffs on notice that no support would be forthcoming from that branch of the government." (122 F. Supp. at 257).	(3) Counsel for the committee did *not* during the term of President Cleveland appeal to the Secretary of the Interior. Their claims were *never referred* to the then Attorney General. He *never held*, directly or indirectly, that their claims were unfounded. The incorrectness of this statement casts a cloud over the entire opinion herein. The fact is that the 1897 opinion of the Attorney General, 21 Op. A.G. 486, was *not* generated by the petitioners or anyone connected with them. Messrs. Charles and C. E. Gibson of St. Louis, acting as "citizens only", under date of December 29, 1896, filed with the Secretary of the Interior a paper "in the nature of an information" making pro-

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Again, at page 259, Judge Tamm states: "Plaintiffs themselves were responsible for the opinions of the Attorneys General . . . ."	test against the patenting of public lands to Railway, a Wisconsin corporation, of lands which the informants claimed had already been appropriated by Congress to the federal corporation for the purposes stated in the statute (13 Stat. 365). The text of this "information" appears at pages 3017 ff. of the JCC Hearings. Mr. Stetson, counsel for respondent Railway, answered the information. The text of his answer appears at pages 3049 ff. of the JCC Hearings. The Secretary of the Interior referred this "information" to the Attorney General, who thereupon issued the opinion now used to petitioners' great prejudice. The statement that President Cleveland's Attorney General had reviewed and rejected petitioners' claims is fiction. Furthermore, the opinion in 25 Ops. A.G. 401 did *not* reject petitioners' claims as unfounded. It merely advised the Secretary of the Interior that he should not entertain "collateral attack" upon the consent foreclosure decree. This Court, in the *Boyd* case, 228 U.S. 482

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	overruled this opinion. That case holds that the decree is subject to collateral attack by a non-party thereto.
	The statement that the plaintiffs themselves were responsible for the opinions of the Attorneys General is not in accordance with the facts. cf. *Southern Pacific R. Co.* v. *Stanley*, Cir. Ct., S. D. Calif., 49 Fed. 263 (1892).
	It should be noted that under date of February 1, 1897, Assistant Attorney General J. H. Leonberger advised the Secretary of the Interior, "Upon careful consideration of the language of the grant to the Northern Pacific *Railroad* Company I do not think it your duty to patent lands to a grantee of that company [i.e. Northern Pacific *Railway* Company]."
	This opinion states that for both substantive legal reasons and administrative reasons the land patents should be issued to the federal corporation notwithstanding Railway's claims to successorship by virtue of the consent foreclosure and its "sundry muniments of title" [i.e. bonds and stocks of the federal corporation; See R. 182, 245].

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(4) "On the issue of fraud, plaintiffs are also confronted with a statement made by their late counsel in a letter of March 29, 1916: " 'That a great wrong has been done them [minority stockholders] has always been believed in, but discovering of the breach of trust and of the perfidy of the fraud perpetrated against them was not had until now, the facts having been most skillfully concealed from government officials, from the court and from the public.[10]' " (122 F. Supp. at 258-9)	(4) The complaint makes no allegations of concealed fraud. Judge Tamm was informed in briefs and on argument that the only fraud issue was respondent's fraud upon the courts. The injection of concealed fraud as one of the elements of the cause of action is a perversion of the well pleaded facts in the complaint. Furthermore, Rule 26(d) of the Rules of Civil Procedure prohibits the use Judge Tamm has made of this so-called Exhibit. It is only a paper caused to be marked for identification by repondent's counsel who never made any attempt to comply with Rule 26(d)(3) governing the use of depositions. We have heretofore pointed out that Judge Tamm failed to rule on petitioners' request to exclude unvouched for papers and that the Court of Appeals denied petitioners' motion to exclude the papers marked for identification on the Lishman deposition. (R. 562, 563).
(5) "Where a plaintiff has been acquiescent while defendant has made great changes and expenditures of money, courts of equity have	(5) (a) Judge McLaughlin on the same complaint previously found that plaintiffs had not been acquiescent (*Landell* v. *Northern Pacific*

"[10] Letter from Joseph P. McCullen, counsel for the committee, to Francis Lynde Stetson, attorney for the defendant Railway. Lishman Deposition, p. 180, exhibit 100."

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always refused to give relief. *Hays* v. *Port of Seattle*, 251 U.S. 233, 40 S. Ct. 125, 64 L. Ed. 243; *Patterson* v. *Hewitt*, 195 U.S. 309, 25 S. Ct. 35, 49 L. Ed. 214." (122 F. Supp. at 259).	*Railway Co.*, 98 F. Supp. at p. 481-2). (b) The answer does not plead acquiescence. There is no allegation in the answer or claim in the record that respondent has ever made any expenditures or changed its position because of reliance upon petitioners' acquiescence. The record contains testimony of respondent's vice president in 1926 before a Committee of Congress that respondent "always" conducted its affairs with reference to the rights of the minority stockholders in the federal corporation. This was never disputed but admitted (R. 261). The record also contains evidence confirming the vice president's testimony. (c) Respondent in its reply brief in the District Court *disavowed* the defense of acquiescence: "While we do not concede the point, we do not now argue that plaintiffs have 'acquiesced'. Our position is that their long-continued delay results in their claims being barred even though the Railway Company knew of their objections." (Transcript 1063). This position is, of

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	course, squarely contrary to all precedents in the field of laches—namely, that *long-continued delay alone does not constitute laches.*
(6) "Granting the relief prayed for by the plaintiffs would create a concentric chaos affecting the rights and equities of thousands of stockholders and creditors, most of which were not even in existence at the time of the alleged fraud." (122 F. Supp. at 259).	(6) (a) This is contrary to the well pleaded allegations in the complaint. The complaint alleges: "As shown hereinafter, defendant from 1896 to date has planned and conducted its business and mortgage financing in a manner so as to keep itself in a position of ability to transfer and convey the railroad of Northern Pacific Railroad Company it purportedly acquired in the years 1896 to 1899 back to the said federal corporation now dominated and controlled by it." (R. 5) The complaint alleges unusual escape clause provisions in all of respondent's mortgages permitting it with a minimum of complication to transfer the railroad back to the federal corporation. (R. 42-43). (b) There is no proof in the record of any harm to innocent purchasers if the court should award petitioners their 3% pro rata share of the benefits accruing from respondent's daily use of the

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	operating franchise, powers and privileges of the federal corporation. (See Frank: Some Realistic Reflections on Some Aspects of Corporate Reorganization," 19 Va. L. Rev. 541, 543).

In its brief before the Court of Appeals and again in its brief in this Court, respondent undertook to restate the question on appeal. This restatement misinformed both Courts as to the basic facts. Respondent incorrectly stated that petitioners or their predecessors had refused an offer to participate on equal terms with all the other stockholders in the 1896 reorganization.*

We submit that it is not good judicial administration to have the important public and private questions inherent in this case disposed of by means of a per curiam Court of Appeals decision based upon a District Court opinion granting summary judgment and containing errors of material fact detrimental to petitioners, and based also upon a misstatement of material facts contained in respondent's briefs before both this Court and the Court of Appeals.

III.

That the matter involved is one of great public interest is manifest from the statutory requirement that the federal corporation shall operate and maintain a *continuous* railroad between Lake Superior and Puget

* The factual incorrectness of this assertion was called to this Court's attention by communication dated September 28, 1955 from petitioners' counsel to the Clerk of this Court. See also page 5 of Appendix D to the petition for certiorari herein.

Sound. Because of this fundamental public interest the statute prohibits any mortgage of the railroad, *as distinguished from the land grant*, without the consent of Congress.

Respondent in its answer asserts the right to mortgage the railroad, notwithstanding this statutory prohibition (R. 104).

The decisions below sanction the novel and preposterous legal doctrine that selective obedience to some provisions in an operative statute can justify present and continuing violation of the other terms therein, provided the violation has been persisted in over a sufficient period of time.

This Court has expounded the doctrine that this particular railroad must not be subjected to the divisive impacts of the laws of the seven States through which it passes and that the federal corporation is the instrumentality established by Congress to accomplish the continuing, national purposes expressed in the statute. *Roberts* v. *Northern Pacific Railroad Co.*, 158 U.S. 1 (1895).

The decision below ignores both the statute and the decision in the *Roberts* case. It lends its aid to cripple and defeat the plain terms of a statute enacted in the public interest. See *Anderson* v. *Abbott*, 321 U.S. 349, 366-7 (1944).

IV.

Denial of certiorari leaves intolerable confusion in the law, both as respects the assignability of railroad franchises and the fiduciary relationship of a majority to a minority stockholder.

It is contrary to the decision in *Northern Pacific Railway Company* v. *Boyd*, 228 U.S. 482 (1913), that

the consent decrees relied upon as a basis for respondent's right of succession are void as against non-parties to the proceedings. It is also contrary to *International Life Insurance Co.* v. *Sherman*, 262 U.S. 346 (1923) and to *Southern Pacific Co.* v. *Bogert*, 250 U.S. 483 (1919).

Congress has refused to repeal the statute. Congress has also refused to substitute respondent as the necessary federal instrumentality under the statute.

Congress has refused to dissolve the federal corporation. Had it done so, remedial provision would have had to be made for the minority stockholders whom Congress had invited to invest and whom it had constituted members of a continuing federal body politic and corporate. See *Munn* v. *Illinois*, 94 U.S. 113, 124.

Yet the decision herein is a judicial repeal of the statute so far as the minority are concerned.

Respondent's own perceptiveness of the true state of the matter—namely that the present rightful owner of the franchise and tax exemption privilege is the federal corporation—is manifested by the fact that since the decision it has held stockholders' meetings of the federal corporation.

The decision, however, makes minority attendance at these meetings a meaningless formality. When respondent, as 97% stockholder, elects and uses the management of the federal corporation to execute necessary title and other papers and to use the federal corporation's railroad franchise and tax exemption privilege, the minority can make no effective complaint. Their stock certificates, according to the decision, are like tickets to a performance at which the minority

are merely members of the audience. The concept of the fiduciary relationship of a majority to a minority stockholder has been made meaningless.

A few practical questions will emphasize the injustice and the confusion thrice confounded created by the present most novel decision.

Suppose Congress should reconsider and dissolve the federal corporation and provide that its operating franchises and federally granted powers and privileges be transferred to respondent—will respondent's 97% stock interest permit it to take everything to the exclusion of the minority 3%?

Suppose Congress should require that the operating franchise, powers and privileges be transferred back to the existing federal corporation—will the 3% minority be entitled to anything?

Suppose the Attorney General of the United States or one of the seven States traversed by the railroad should bring effective *quo warranto* proceedings and drive respondent back into the federal corporation—what happens to the 3% minority?

Respondent's Wisconsin charter is a special act apparently prohibited by the Constitution of that State. See *Attorney General* v. *Superior and St. Croix Railroad Company*, 93 Wisc. 604, 67 N.W. 1138 (1896).

The privilege of tax exemption on the railroad right of way granted by Congress to the federal corporation does not run with the land. It is personal to the grantee and cannot be transferred by act of the parties or by decree of the court. *Chesapeake & Ohio Ry.* v. *Miller*, 114 U.S. 176 (1885).

Suppose respondent, to protect itself against its charter infirmity or to keep the tax exemption privilege, should exercise its discretionary right, reserved in all its mortgages, and transfer the main line of railroad back to the federal corporation—does the decision mean that the 3% federal corporation minority stock would be barred from any participation?

Does the decision nullify the provision in the 1896 foreclosure decree, and in the conveyances to respondent thereunder, which reserves and keeps open the question whether the foreclosure of the main line of railroad was void because the mortgage thereof had not been consented to by Congress as required by the statute?

This Court, in the interests of justice and of good judicial administration, should reconsider its denial of the petition for certiorari.

Respectfully submitted,

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October 1955.

I hereby certify that the foregoing petition is presented in good faith and not for delay, and states grounds of substantial or controlling effect shown by intervening circumstances, (misstatement of material fact in respondent's brief filed in this Court) and states other substantial grounds available to petitioner although not previously presented.

EDWARD BROWN WILLIAMS